

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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November 6, 2012

This draft is a redraft of 2011 LRB-0339/P1. It is in preliminary form. Because the drafting instructions for this proposal were originally given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles and utility terrain vehicles (including registration procedures) are structured. I discussed this issue last session with John Schnorr of the Wisconsin Off-Highway Vehicle Association, and he concurred with this approach. Please note the following comments and issues:

1. From the instructions for this draft, and from the meeting at your office last session, I have understood that your intention is to allow an off-highway vehicle (OHV) to be operated on public land *only* on designated trails. This means that, for example, an OHV could not be operated on frozen waters which, if navigable when not frozen, are public waters. I have also understood from the instructions that an OHV must be registered only for the purpose of operation on an OHV trail. Thus, the draft does not require an OHV to be registered if it is operated elsewhere (unless it is a Class A OHV that must be registered under ch. 341, stats.). However, under this draft, certain restrictions that apply to the operation of an OHV generally, for example equipment requirements, apply to the operation of an OHV on any property, public or private. If these basic assumptions are incorrect, please let me know and I will redraft accordingly.
2. I did not draft certain parts of the proposed language because that language was inconsistent with the instructions given at the meeting at your office last session in which we discussed this proposal. For example, the proposal includes language authorizing an OHV to cross a public road right-of-way in certain circumstances, but at our meeting Mr. Schnorr indicated that there was no need for any provisions authorizing an OHV to cross a right-of-way. If, after reviewing the draft and the drafting instructions, you find that there are provisions from the proposal that still need to be added to the draft, please let me know and I will include them in the next version of the draft.
3. Your instructions included requirements for both civil penalties (forfeitures) and a criminal penalty (misdemeanor). I have assumed, for purposes of this draft, that you wanted to impose civil penalties, and not criminal penalties, for violations that do not

involve the intoxicated operation of an OHV. For violations of the intoxicated operation law, see item 1 in Mary Gibson-Glass's drafter's note.

4. Under current law, s. 20.370 (3) (at), stats., appropriates amounts remitted to DNR from various safety instruction program fees for the purpose of those programs. That is, the fees from all of these programs are not specifically identified for use by the given program for which the fee was remitted. I have included the safety program fees under this draft in this appropriation. Is this OK or do you want a separate appropriation for these OHV safety program fees?

5. I recommend that the draft include a delayed effective date for certain provisions. Under the draft, funding for OHV trails comes from registration fees. The draft also specifies that these fees will fund state law enforcement operations and the grant program established in the draft. I don't know how long it will take to generate enough fees as a practical matter to fund all of these activities. Furthermore, will an OHV operator register an OHV if there are no trails on which to operate the vehicle? You may want to consider another funding source to provide initial funding for the construction of OHV trails. I recommend that you consult with Erin Probst at the Legislative Fiscal Bureau with regard to these funding issues.

6. Do you want the draft to include a Lac du Flambeau band registration program for OHVs that is similar to the program that applies to ATVs and UTVs under s. 23.33 (2g), stats.?

7. Please note that under this draft, the forfeiture procedure under ss. 23.50 to 23.85 in current law (including citation procedure) will apply to OHV violations. Is this OK?

8. Your instructions requested that the forfeitures collected for OHV violations be used to fund OHV enforcement laws and environmental restoration. The Wisconsin Constitution requires all forfeitures to be credited to the school fund. If you want to provide funding for the requested purposes, you may want to impose a surcharge in addition to the forfeiture amount and then direct that the surcharge be used for the purposes requested.

9. Your instructions included language that specifically prohibits destruction of wetlands. Because current law already prohibits damage to natural resources and generally prohibits the operation of a motor vehicle in or on a navigable water (see ss. 23.095 and 30.29, stats.), I did not include this language in this draft.

10. The provisions with regard to helmet requirements in this draft are based on those in the laws regulating ATVs. Is this OK?

11. The instructions included a requirement to create an OHV council. The instructions also included a requirement that the OHV council promulgate certain rules. Under Wisconsin law, councils do not have rule-making authority. If you wish to authorize the OHV council to promulgate rules, you may wish to create an OHV board rather than an OHV council.

12. In addition to the issues raised above, the draft contains embedded notes that raise other issues. Please review those notes as well.

If you have any questions, please feel free to call me.

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Tim:

I have drafted the OWI provisions. In reviewing these please note the following:

1. I have not included any specific penalties for operating while intoxicated. Please look at s. 23.33 (13), stats., and let me know if you want to include any of those provisions that relate to intoxicated operation.
2. I have not included language to have violations under the OWI provisions count as violations for purposes of the regular motor vehicle OWI laws. This will be included in a later version of this draft once the other OWI penalties are finalized.

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